

1
2
3
4
5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8 In the Matter of the Application of:

9 **Han Joon Park**

Precedent Decision No. 01 – 08

10
11
12 A hearing on this application was held on July 20, 2001, in San Diego, California, by
13 Deborah Bain, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 California Victim Compensation and Government Claims Board (Board).

15 The applicant, Han Joon Park, attended the hearing. Mr. Park was represented by
16 Marlene E. Ramos, Senior Service Coordinator, Los Angeles City Attorney's Office. Susan Choi,
17 Victim Service Coordinator, Los Angeles City Attorney's Office, served as interpreter and testified.

18 **Claim History**

19 The application was received on March 7, 2001. Mr. Park requested funds for medical
20 expenses and mental health counseling resulting from a possible hit and run and robbery. Board staff
21 recommended denial of the application based on the staff's determination that there was a lack of
22 evidence that Mr. Park's injuries were the direct result of a crime and that Mr. Park's failure to timely
23 report the crime constituted a failure to cooperate with law enforcement. The recommendation for
24 denial was scheduled for the May 18, 2001, consent agenda. A timely appeal was filed and the matter
25 was set for hearing.

26 **Summary of Issues**

27 Staff recommended denial of Mr. Park's application based on staff's determination that
28 Mr. Park was not a victim of a qualifying crime and that Mr. Park had failed to cooperate with law
29 enforcement.

Findings of Fact

Mr. Park testified through his interpreter that October 22, 2000, he went to a bar called the Vineyard. Mr. Park arrived at the Vineyard at approximately 10:30 p.m. Mr. Park had a few drinks. He left the bar around 1:00 a.m. Mr. Park started to walk home. Mr. Park's apartment is approximately twenty minutes from the Vineyard. He was walking on Vermont Avenue in Los Angeles. He decided to stop and have some Korean food at a restaurant. He remembers crossing the street. The next thing Mr. Park remembers is seeing paramedics.

Hospital records reflect that Mr. Park was found lying in the street and that he had amnesia from the event. Mr. Park had a fractured jaw, bone fragments in his knee, and head trauma. The paramedics and hospital staff surmised that an automobile had hit Mr. Park. Mr. Park was discharged from the hospital on November 3, 2000. Due to his injuries, Mr. Park missed one week of work.

Mr. Park testified that while in the hospital he realized that his wallet was missing. He knew he had his wallet when he was at the Vineyard because he paid for his drinks. Mr. Park canceled his credit card. Subsequently, he received notice of a Discover credit card purchase that he had not incurred. Mr. Park provided a copy of the receipt. The receipt shows that the credit card was used at a Shell Station for gasoline on October 22, 2000, at 2:27 a.m. Paramedics arrived on the scene to assisted Mr. Park on October 22, 2000, at 2:34 a.m. Additionally, Mr. Park provided a November 11, 2000, letter from Discover card reversing the charge.

Mr. Park has lived in the United States for eleven years. Mr. Park testified that he lives removed from the English-speaking community and he was not aware of the Victim Compensation Program. Mr. Park lives in a predominantly Korean community and worked for a Korean company.¹

Mr. Park learned of the program from his brother, Eljoon Park. His brother was overseas in the military. When his brother came home he told Mr. Park about the program. Mr. Park and Eljoon Park contacted the City Attorney's Office and spoke to Ms. Choi. Ms. Choi's told Mr. Park

¹ Ms. Choi testified that in her experience most individuals in the Korean-speaking community do not know about the program. Ms. Choi stated the program is advertised in Korean newspapers and on the radio. However, Ms. Choi has found that most individuals in the Korean-speaking community still do not know about the program until "they become a victim of a crime."

1 that he needed to make a police report. Mr. Park testified that he thought the paramedics reported the
2 incident to the police.

3 Mr. Park testified that he learned after the incident that a few blocks away from Vermont is a
4 high crime area. Mr. Park stated that he felt partly responsible for the crime because he had walked
5 instead of taking a cab.² He felt partly responsible for the crime and therefore did not feel comfortable
6 asking for compensation. Mr. Park also stated that he was embarrassed by his inability to
7 communicate easily in English. He did not want his mother to know that he could not take care of
8 himself.³ Whenever Mr. Park received a letter from the Board he used a dictionary and translated
9 word by word.

10 Mr. Park and Eljoon Park went to the police.⁴ Mr. Park testified that they initially went to a
11 traffic division. Mr. Park thought he should report it to the traffic division because the paramedics said
12 that his injuries were the result of a hit and run. Mr. Park testified that Los Angeles Police
13 Sergeant Montelongo reviewed Mr. Park's medical records and credit card information.

14 Mr. Park stated that Sergeant Montelongo, who has investigated numerous traffic accidents,
15 agreed with Mr. Park that his injuries were not the result of a hit and run. Sergeant Montelongo told
16 Mr. Park that the nature of the injuries, to wit, an injury to the back of the head, the front of the head,
17 and his leg, without additional injuries were not consistent with being hit by a car.
18 Sergeant Montelongo told Mr. Park that he needed to report the robbery to the Wilshire Branch.

19 A Los Angeles Police Report reflects that Mr. Park reported the incident to Officer Sanchez
20 on January 25, 2001. Eljoon Park interpreted for Mr. Park. Mr. Park told the officer that he was
21 walking on Vermont and the next thing he remembered was that he woke up in the hospital. Mr. Park
22 told Officer Sanchez that he did not believe he was a victim of a traffic collision but had no
23 recollection of what had happened.

24
25
26
27

² Mr. Park's statement comes from an April 18, 2001, letter to the Board that was drafted by his brother.

28 ³ Mr. Park was 29 years old when the crime occurred.

29 ⁴ Ms. Choi testified that based on her records, Mr. Park reported the crime to the police within a day or two of her telling him that he needed to report the incident.

Officer Sanchez noted that no report was made at the time of the incident because Mr. Park thought it was just his “bad luck.” Ms. Choi testified that the actual translation is that Mr. Park thought he was in the wrong place at the wrong time.

Mr. Park testified that he brought his medical records and the credit card information to Officer Sanchez. However, Officer Sanchez did not seem interested. Mr. Park thought that perhaps his attitude was based on feeling embarrassed. Mr. Park explained that law enforcement officers in Korea feel responsible when a crime occurs in the area that they are patrolling.

Ms. Choi testified that Eljoon Park called her after meeting with the police. He was very concerned about the officer's lack of interest in writing the report and the inaccuracies that were in the report that was written.

Sergeant Montelongo's observations are not reflected in Officer Sanchez's report. However, Officer Sanchez's report notes that Sergeant Montelongo recommended that an "injury report be taken (no t/c)." From the report it is clear that t/c is the acronym for traffic collision. It appears from the report that Sergeant Montelongo had concluded that Mr. Park was not a victim of a hit and run.

Determination of Issues

Government Code section 13964(a) provides that the Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. Written reports from a law enforcement agency responsible for investigating the qualifying crime may be relied upon. (Cal. Code Regs., tit. 2, § 647.31.)⁵ The applicant has the burden of proving all issues necessary to establish eligibility by a preponderance of evidence. (Reg. § 647.32.)

A victim is not eligible for program assistance if the victim failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. (Gov. Code, § 13964(c)(2).) A victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement

⁵ All regulation citations are to California Code of Regulations, title 2.

1 agency. (Reg. § 657.1(f).) In order to determine that a victim failed to cooperate with a law
2 enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely
3 affected a law enforcement agency as described in regulation section 657.1, subsection (f). (Reg. §
4 657.1(g).) The Program has the burden of proving all issues necessary to disqualify an applicant for
5 failing to reasonably cooperate with law enforcement. (Reg. § 647.32(b).)

6 Staff recommended denial of Mr. Park's application in part because they determined that
7 there was a lack of evidence that Mr. Park's injuries were the direct result of a crime. Mr. Park
8 reported the crime three months after it occurred. Staff noted that the Board typically considers a
9 significant delay in reporting a crime a failure to cooperate with law enforcement because it hinders
10 law enforcement's ability to conduct a complete investigation. A delay in reporting a crime often can
11 result in law enforcement's inability to obtain witnesses and information to substantiate that a crime
12 has occurred. Generally, this is true. However, the facts in this case are distinguishable.

13 There is sufficient evidence that Mr. Park was the victim of a robbery. Mr. Park testified
14 that he had his wallet while at the Vineyard. He started to walk home. The next thing he recalled was
15 the arrival of the paramedics. The paramedics' report shows that they received the call on
16 October 22, 2000, at 2:31 a.m. They arrived at the scene at 2:34 a.m. The credit card purchase for
17 gasoline was made on October 22, 2000, at 2:27 a.m. From the police report, it appears that Sergeant
18 Montelongo concluded that Mr. Park's injuries were the result of a robbery and not a hit and run.

19 Based on Mr. Park's missing wallet, the unauthorized use of Mr. Park's credit cards, and
20 the nature of Mr. Park's injuries, it is found that Mr. Park is the victim of a qualifying crime.

21 Mr. Park's testimony was truthful and credible. Mr. Park's failure to timely report the crime
22 to law enforcement stems from a number of factors. Mr. Park lives isolated from the English-speaking
23 community. There is a language barrier. He mistakenly believed that the paramedics had reported the
24 crime. His brother, who is fluent in English, told him there was a program that helps victims of crime.
25 Mr. Park contacted the Victim Assistance Program and spoke to Ms. Choi. It was only after contacting
26 Ms. Choi that Mr. Park learned that he needed to report the crime. Mr. Park contacted law
27 enforcement and reported the crime.

28 Based on the severity of Mr. Park's injuries it appears that Mr. Park was initially
29 physically unable to report the crime. Further, hospital records note that Mr. Park suffered from

1 amnesia. Mr. Park would not have been to able provide law enforcement with any additional
2 assistance the day of the crime than he did three months later.

3 When Mr. Park reported the crime, he assisted law enforcement by providing them with
4 documentation showing that someone was using his credit card. Officer Sanchez could have
5 subsequently contacted the merchant to determine if there was any evidence that would lead to the
6 apprehension of the individual that committed the robbery.

7 Mr. Park's ignorance of the procedure for reporting a crime does not constitute a failure to
8 cooperate with law enforcement.

9 Considering all of the evidence, there is sufficient evidence that Mr. Park was a victim of a
10 robbery and there is insufficient evidence that he failed to reasonably cooperate with law
11 enforcement.

12 **Order**

13 The application should be allowed and any verified, covered pecuniary losses should be
14 reimbursed.

15
16
17 Date: August 28, 2001

18 _____
19 DEBORAH BAIN
20 Hearing Officer
21 California Victim Compensation and
22 Government Claims Board
23
24
25
26
27
28
29

1
2
3 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
4 **OF THE STATE OF CALIFORNIA**
5
6
7

8
9 In the Matter of the Application of:

10 **Han Joon Park**
11

Precedent Decision No. 01 – 08

12
13 On October 19, 2001, the California Victim Compensation and Government Claims Board
14 adopted the attached Decision as an Precedent Decision in the above-referenced matter. The Decision
15 became effective on October 19, 2001.
16

17 Date: October 30, 2001

18 JANICE HILL
19 Acting Chief Counsel
20 California Victim Compensation and
21 Government Claims Board
22
23
24
25
26
27
28
29